STATE OF MICHIGAN

COURT OF APPEALS

MARJORIE L TYLER, individually and as next friend of ANNA RHINE, Plaintiffs-Appellants/Cross-Appellees, v HURON VALLEY SINAI HOSPITAL, DONNA BONDY, and DR MAURICE ROETHEL, Defendants-Appellees/Cross-Appellants.	UNPUBLISHED March 23, 2006 No. 264267 Oakland Circuit Court LC No. 03-053442-NZ

Before: Cooper, P.J., and Jansen and Markey, JJ.

PER CURIAM.

Plaintiffs appeal by right the trial court's order granting defendants summary disposition under MCR 2.116(C)(10) on plaintiff Anna Rhine's claim of false imprisonment instituted on her behalf by her daughter and then sole guardian, Marjorie Tyler, and also granting defendants summary disposition on plaintiff Tyler's individual claim of intentional infliction of emotional distress. Defendants cross-appeal the trial court's ruling rejecting defendants' alternative arguments for summary disposition: (1) that plaintiffs' complaint should have been dismissed because it actually presented a defective medical malpractice claim, and (2) that defendants' conduct was immune from tort liability under MCL 400.11c. We conclude that the trial court correctly granted defendants summary disposition. Therefore, we decline to address defendants' alternative basis for summary disposition because the issues are moot. We affirm.

I. Summary of Facts and Proceedings

Plaintiff Anna Rhine ("Rhine") is an elderly woman who suffers from senile dementia and a number of other physical ailments and is incapable of making informed decisions. At all times pertinent to this case, Rhine's daughter, plaintiff Marjorie Tyler ("Tyler"), served as Rhine's legal guardian. Another of Rhine's daughters, Carolyn Wozny ("Wozny") was appointed co-guardian shortly after the events of this case. Wozny testified that Rhine would be unable to orient herself to time, place, or person, and would not recognize her surroundings as a hospital.

On December 18, 2002 around 5:30 p.m., Tyler took Rhine to defendant Huron Valley Sinai Hospital ("Huron") because her mother was lethargic. Tyler expected that her mother would

be examined, diagnosed, treated, and sent home. It is not disputed that when Rhine presented at Huron, she was profoundly dehydrated, had a urinary tract or bladder infection, a fever, and other life-threatening ailments. Wozny arrived at Huron's emergency room around 8:00 p.m.

Dr Maurice Roethel was Rhine's attending emergency room physician. In Dr. Roethel's opinion, Rhine required hospitalization to treat her dehydration; he was also concerned that Rhine's urinary tract infection might become septic. Dr. Roethel suspected Rhine's dehydration resulted from neglect because the condition he observed would have taken two or three days to develop, and he was not aware of anything in Rhine's medical history to explain her profound dehydration. Dr. Roethel testified that Rhine's daughters wanted to either take Rhine home with an "IV" or allow her to stay in the emergency room. Roethel, however, told the sisters that their mother required hospitalization, and that the sisters' requests were not feasible. Roethel testified that a "ruckus" - - yelling between Rhine's daughters and nurses - - occurred in the emergency room between 10:00 p.m. and 12:43 a.m., and that the police were called. In an effort to resolve the "ruckus," Roethel discussed with Huron's nursing supervisor, Donna Bondy, giving the family three options: (1) admit Rhine as a patient at Huron, (2) transfer Rhine to another healthcare facility, or (3) release Rhine against medical advice (AMA).

Defendant Bondy, a registered nurse, learned there was a problem in the emergency room when she started her shift at 11:00 p.m. Bondy discussed "options" with Tyler and her sister. Bondy agreed that Tyler said at some point that she wanted Rhine transferred to Botsford Hospital. Bondy never saw guardianship papers and was aware that Huron's staff suspected Rhine had been neglected or abused. She offered Tyler and Wozny three options: (1) they admit Rhine to Huron (2) show guardianship and take Rhine AMA, or (3) arrange for the transfer of Rhine to Botsford Hospital or another facility. Tyler admitted that she was informed of these options at least five times.

Tyler denied being angry in the emergency room; rather, she felt threatened when Bondy shouted, "I heard abuse in [Rhine's] room." She denied abusing her mother and testified that neither she nor her sister raised their voices while conversing with Huron staff. Tyler testified another patient in the same room as her mother was uttering profanity. She also denied that either she or her sister interfered with Rhine's treatment, or that they were creating a disturbance.

After Tyler left the hospital around midnight to retrieve her guardianship papers, she was not allowed back in. Oakland County Sheriff's deputies told Tyler and her sister not return to Huron until the morning. According to Tyler, she telephoned Huron three times after leaving Huron attempting to provide Huron staff information regarding treatment of her mother. Neither she nor her sister attempted to visit Rhine at Huron on December 19, 2002 until about 6:00 p.m.; a patient advocate had arranged a supervised visit. Rhine was transferred to Botsford Hospital by ambulance on December 20, 2002, and discharged on December 21, 2002.

Tyler admitted that neither she nor her sister took guardianship papers to Huron on the night in question. Tyler was also aware she needed the guardianship papers to have the legal authority to make decisions on her mother's behalf. Even more significant, both Tyler and Wozny admitted that defendants offered them the option of removing their mother from Huron AMA upon presentation of proof of guardianship. Both Tyler and Wozny rejected the offer.

Oakland County Deputy Sheriff Ron Soncrainte testified that he responded to a call from Huron shortly before midnight on December 18, 2002. When he arrived, Huron's nursing staff told him they felt threatened by two sisters who wanted to take their mother home; the Huron staff also told Soncrainte that the sisters could take their mother against the hospital's wishes if they produced guardianship papers. Further, the nursing staff told Soncrainte that the sister's behavior made it difficult to care for the patient and that the sisters had ignored several requests to leave. One of the nurses also mentioned elder abuse, saying one of the sisters had struck their mother with papers. Deputy Soncrainte testified that both sisters were angry and upset when he entered the patient's room. He asked them both to leave, and when they refused, the nursing staff repeated the request in his presence. According to Soncrainte, Tyler told him that her guardianship papers were in her car. So he told Tyler to go get the papers and that Wozny could stay until she returned. Instead of going to her car and returning with the guardianship papers, Tyler drove away.

Deputy Soncrainte testified that after Tyler left the building, Wozny acted defiantly toward the nursing staff by pulling and tugging at Rhine's sheets while a nurse attempted to adjust them. He asked Wozny to leave, but she refused and grabbed the siderails of Rhine's bed. When Soncrainte attempted to remove Wozny's hand from the bedrail, she released her grasp, punched him in the chest, and again grabbed the bedrail. Deputy Soncrainte and another deputy then handcuffed Wozny and escorted her to Soncrainte's patrol car; she was cited for trespassing and being a disorderly person.

Deputy Soncrainte testified that about one-half hour after Tyler left, she returned with numerous papers that he did not examine. Soncrainte advised Tyler the hospital did not want her back inside but that she could call in the morning to arrange a visit.

Plaintiffs alleged two causes of action their first amended complaint. In Count I, Tyler asserts defendants' conduct constituted the tort of intentional infliction of emotional distress. In Count II, Rhine through Tyler claims that defendants falsely imprisoned her by not honoring Tyler's request to transfer Rhine to Botsford Hospital.

Following discovery, defendants moved for summary disposition. Defendants presented three arguments: (1) plaintiffs' claims actually sounded in medical malpractice (misdiagnosing elder abuse), but plaintiffs had not complied with the procedural prerequisites of such an action; (2) defendants were entitled to immunity under MCL 400.11c with respect to reporting suspected abuse; and (3) plaintiffs had failed to produce sufficient evidence to establish either a prima facie case of false imprisonment or to satisfy the standard of extreme and outrageous behavior necessary to sustain a cause of action for intentional infliction of emotional distress.

The trial court rejected defendants' first two arguments but nevertheless granted defendants summary disposition under MCR 2.116(C)(10). First, with respect to plaintiff Tyler's claim for intentional infliction of emotional distress, the trial court reasoned that plaintiff failed to provide evidence to create a genuine issue of material fact. Specifically, the trial court ruled that, "reasonable minds would agree in finding that the conduct of the Defendants falls short of extreme or outrageous behavior" necessary to establish the tort of intentional infliction of emotional distress.

With respect to plaintiffs' claim of false imprisonment based solely on defendants' alleged refusal to follow Tyler's request to transfer Rhine to Botsford Hospital, the trial court noted the elements of false imprisonment are (1) an act committed with the intention of confining another; (2) that act directly or indirectly results in such confinement, and (3) the person confined is conscious of the confinement. The court reasoned:

> [T]he Plaintiff specifically concedes that she was offered the option of removing her mother from the Defendant hospital, but chose not to do so. . . . Based on this admission, reasonable minds cannot differ in finding the lack of a genuine issue of material fact regarding an act committed with intention to confine the Plaintiff's mother, at least regarding the initial admission. The Plaintiff's unsupported argument that the Defendants' failure to honor her desire to transfer her mother to Botsford Hospital constitutes false imprisonment simply does not obviate the indisputable fact that the Defendants gave the Plaintiff and her mother the option to leave. That the Plaintiff did not wish to accept the Defendants' offer to leave does not negate the fact that the offer was made and rejected. As such, reasonable minds cannot differ in finding that the first element of the Plaintiff's false imprisonment claim is not satisfied - - i.e., reasonable minds cannot differ in finding the lack of an act committed with the intention of confining another.

The trial court also rejected plaintiffs' argument that defendants' denying Tyler access to the hospital in the early morning of December 20 established a claim of false imprisonment. The trial court reasoned that plaintiff had not sought leave to amend her complaint and considering the merits of the argument, "the evidence, viewed most favorably to the Plaintiff, is insufficient to create a genuine issue of material fact warranting denial of summary disposition." Further, the court wrote:

> That the Defendants denied the Plaintiff access under these particular circumstances does not mean that the Defendants would have refused to discharge the Plaintiff's mother upon the Plaintiff's request. The Plaintiff concedes she did not ask the Defendants to discharge her mother upon returning to the hospital and being denied access. Moreover, the Plaintiff's previous refusal to accept the Defendants' offer to leave simply belies any notion that the Defendants had any intent to falsely imprison the Plaintiff's mother. As such, the Plaintiff has failed to provide sufficient evidence to create a genuine issue of material fact on this issue.

II. Standard of Review

We review de novo a trial court's decision on a motion for summary disposition to determine if the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). A motion brought under MCR 2.116(C)(10) tests the factual sufficiency of a complaint and must be supported by affidavits, depositions, admissions, or other documentary evidence. MCR 2.116(G)(3)(b); *Maiden, supra* at 120. The trial court and this Court must view the substantively admissible evidence submitted at the time of the motion in the light most favorable to the party opposing the motion. *Id*. at 120-121. If the moving party fulfills its initial burden, the party opposing the motion then must demonstrate with evidentiary

materials that a genuine and material issue of disputed fact exists, and may not rest upon mere allegations or denials in the pleadings. MCR 2.116(G)(4); *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). "Summary disposition is appropriate under MCR 2.116(C)(10) if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *Id*.

III. Analysis

A. Intentional Infliction Of Emotional Distress

Plaintiffs first argue that the trial court erred by relying on defense-favorable testimony in concluding that Tyler and her sister acted inappropriately; therefore, defendants' conduct did not rise to the level of actionable intentional infliction of emotional distress. We disagree.

Although our Supreme Court has not formally recognized that the tort of intentional infliction of emotional distress exists in Michigan, this Court has. *Heckman v Detroit Police Chief*, 267 Mich App 480, 498; 705 NW2d 689 (2005); see, *Smith v Calvary Christian Church*, 462 Mich 679, 686, n 7, 690 (Weaver, J., concurring); 614 NW2d 590 (2000), and *Roberts v Auto-Owners Ins Co*, 422 Mich 594, 601, n 6; 374 NW2d 905 (1985). This Court, however, has "explicitly adopted the definition found in the Restatement Torts, 2d, § 46, pp 71-72." *Rosenberg, supra* at 350. Our Supreme Court observed in *Roberts, supra* at 602:

> Those courts which have recognized intentional infliction of emotional distress as a separate theory of recovery have generally embraced the Restatement definition of the tort:
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> § 46. Outrageous Conduct Causing Severe Emotional Distress
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> (1) One who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress, and if bodily harm to the other results from it, for such bodily harm. [Restatement Torts, 2d, § 46, p 71.]

In accord with the Restatement, this Court has found four essential elements to a claim for intentional infliction of emotional distress: (1) extreme and outrageous conduct; (2) intent or recklessness; (3) causation; and (4) severe emotional distress. *Lewis v LeGrow*, 258 Mich App 175, 196; 670 NW2d 675 (2003); see, also, *Roberts, supra* at 602, citing *Ross v Burns*, 612 F2d 271, 273 (CA 6, 1980).

To establish a prima facie case of intentional infliction of emotional distress, "it has not been enough that the defendant has acted with an intent which is tortious or even criminal, or that he has intended to inflict emotional distress, or even that his conduct has been characterized by 'malice', or a degree of aggravation which would entitle the plaintiff to punitive damages for another tort." *Rosenberg, supra* at 350, quoting Restatement 2d, § 46, comment d. Instead, a defendant may be found liable "'only where the [defendant's] conduct has been so outrageous in

character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community. Generally, the case is one in which the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, 'Outrageous!'" *Roberts*, *supra* at 603, quoting Restatement Torts, 2d, § 46, comment d, pp 72-73. Liability will not be imposed for "mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities." *Id*.

Because the actor's conduct must be extreme before it is actionable, and because the test whether that level has been attained is objective, it is for the court to initially decide whether sufficient evidence exists upon which reasonable jurors could differ regarding whether this standard is satisfied. *Lewis, supra* at 197, citing *Doe v Mills*, 212 Mich App 73, 92; 536 NW2d 824 (1995). "Where reasonable minds may differ, whether a defendant's conduct is so extreme and outrageous as to impose liability is a question for the jury." *Lewis, supra* at 197, citing *Linebaugh v Sheraton Michigan Corp,* 198 Mich App 335, 343; 497 NW2d 585 (1993).

Here, the trial court concluded that plaintiffs presented evidence that defendants' conduct was at most insulting and annoying, not extreme or outrageous, and that, "[i]n light of the context, an average member of the community would not exclaim 'Outrageous!'" Plaintiffs argue that the trial court erred in reaching its conclusion because it ignored the requirement of viewing the evidence in the light most favorable to the non-moving party when deciding a motion for summary disposition under MCR 2.116(C)(10). We disagree.

Viewing the evidence in the light most favorable to the non-moving party does not require that the trial court to ignore evidence favorable to the other party, nor does it require that the trial court draw unreasonable inferences from the evidence. A trial court in ruling on a motion for summary disposition may not make findings of fact or weigh credibility, and it may draw only reasonable inferences from the evidence. *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW2d 475 (1994). The party opposing a motion for summary disposition must present more than conjecture and speculation to meet its burden to produce evidence establishing a genuine issue of material fact. *Karbel v Comerica Bank*, 247 Mich App 90, 97-98; 635 NW2d 69 (2001); see, also, *Stefan v White*, 76 Mich App 654, 661; 257 NW2d 206 (1977) ("[S]peculation or conjecture is insufficient to raise a genuine issue of material fact." As our Supreme Court explained in *Skinner, supra* at 164, quoting *Kaminski v Grand Trunk W R Co*, 347 Mich 417, 422, 79 NW2d 899 (1956), "'a conjecture is simply an explanation consistent with known facts or conditions, but not deducible from them as a reasonable inference.'"

While plaintiff Tyler and her sister Wozny dispute that their conduct would cause others to feel intimidated or frightened, the Huron nursing staff testified that they, in fact, felt intimidated or frightened by the sisters' behavior. Tyler concedes that her mother needed medical treatment and that she needed to present proof of her appointment as guardian to make medical decisions on her mother's behalf. Tyler also admits that she was repeatedly advised of three treatment options, one of which was to take her mother from the hospital against medical advice upon presentation proof of her authority as guardian. It is undisputed that the presence of Huron's supervising nurse, defendant Bondy, was required in the emergency room to attempt to resolve Tyler's objections to the treatment options offered by Huron's staff. Viewing the evidence in a light most favorable to plaintiffs, Tyler and Wozny only wanted to ensure proper care for their mother; nevertheless, they created a tense situation that prompted Bondy to summon both Huron security officers and the police.

There is no evidence to support plaintiffs' argument that defendants' suspicion that Rhine had been the victim of elder abuse was a "pretext" to exclude Tyler from the hospital; thus, it is mere speculation. Dr. Roethel testified he based his conclusion that Rhine's dehydration arose out of neglect by noting Rhine's medical history provided nothing to explain her condition in the absence of abuse. Plaintiffs dispute that Rhine was abused or neglected and present evidence explaining her condition. Plaintiffs also question Dr. Roethel's credibility because he did not document his suspicion in writing. Nevertheless, both Tyler and Wozny testified that Bondy mentioned, "abuse" before Deputy Soncrainte arrived at the emergency room. When Deputy Soncrainte arrived at the emergency room around midnight, one of the staff nurses mentioned abuse. Soncrainte also testified that Huron's nursing staff told him that the sisters' behavior made it difficult to care for the patient, and that they felt threatened by plaintiff and her sister. Moreover, Soncrainte observed conduct by Wozny that appeared to interfere with Rhine's care. Accordingly, reasonable minds could not disagree that Huron's nursing staff felt frightened or intimidated by the sisters and that defendants' suspicion of elder abuse arose before Tyler was excluded from the hospital.

It is also undisputed that defendants offered Tyler and Wozny three options: (1) allow Rhine's admission to Huron, (2) present proof of guardianship and take Rhine against medical advice, or (3) make arrangements to transfer Rhine to Botsford Hospital or another facility. Tyler admitted that Bondy advised her of these options, and, in fact, admitted that she was offered these options at least five times. Based on Deputy Soncrainte's and plaintiff Tyler's own testimony, reasonable minds could only conclude the three options were still available when Soncrainte arrived at the emergency room just before midnight on December 18, 2002. Soncrainte's testimony that he permitted Tyler to go to her car for the purpose of retrieving her guardianship papers is undisputed. It is further undisputed that rather than a 5-minute trip to and from her car to present her guardianship papers, Tyler drove away and did not return for one-half hour. During Tyler's absence, Wozny's interaction with the nursing staff precipitated Soncrainte and the Huron nursing staff to again request that Wozny leave the hospital. Although Wozny disputes that she struck the deputy, it is not disputed that she refused to leave and was arrested as a disorderly person and for trespassing.

The trial court properly rejected plaintiffs' argument that defendants should not have insisted that Tyler produce her guardianship papers because such papers were part of the hospital's records from when Rhine was admitted to the hospital several years earlier. Plaintiffs produced no evidence that the records were readily available to medical staff on the night in question. Further, as the trial court observed, guardianships can and do change over time. Accordingly, defendants' insistence on current proof of Tyler's authority to act on Rhine's behalf cannot be the basis of a claim for intentional infliction of emotional distress.

Although Tyler was not permitted to reenter the hospital in the early morning of December 19, 2002, she was permitted to visit her mother later that day after defendants' suspicion of abuse was allayed. Further, Tyler was able to telephone the hospital three times regarding the care of her mother before that visit. In addition, Tyler admits that the reason Rhine was not transferred to Botsford Hospital on the December 19 was not because defendants refused to honor her authority as guardian but because a bed was not available at Botsford Hospital. Rhine was transferred to Botsford the next day, December 20, 2002, when bed space became available for her.

In deciding whether a plaintiff has presented sufficient evidence to satisfy the threshold level of extreme and outrageous conduct to merit consideration by the factfinder, this Court has opined it is necessary for a court to place the defendant's conduct in context. "[I]t is essential to look to the context in which the alleged offensive conduct occurred, for what may be extreme and outrageous under one set of circumstances may be justifiable under different circumstances." *Rosenberg, supra* at 351. Here, the trial court did no more that place the complained of conduct in context, and refuse to accept arguments that were unsupported by reasonable inferences from the evidence. We conclude that the trial court properly found when viewing the evidence in the light most favorable to plaintiff, that defendants' conduct was at most insulting or annoying, not extreme or outrageous. Because reasonable minds could not differ and would conclude that defendants' conduct under the circumstances that forms the basis of plaintiff's claim did not reach the level of being extreme or outrageous, the trial court properly granted defendants summary disposition. *West, supra* at 183; *Heckman, supra* at 499.

B. False Imprisonment

We conclude that the trial court correctly ruled that the evidence, when viewed in a light most favorable to plaintiffs, failed to raise a factual dispute regarding whether defendants acted with the intent to confine Rhine. So, the court properly granted defendants summary disposition.

The elements of the tort of false imprisonment are: (1) an act committed with the intention of confining another, (2) the act directly or indirectly results in confinement, and (3) the person confined is conscious of their confinement. *Walsh v Taylor*, 263 Mich App 618, 627; 689 NW2d 506 (2004), quoting *Moore v City of Detroit*, 252 Mich App 384, 387; 652 NW2d 688 (2002), quoting *Adams v Nat'l Bank of Detroit*, 444 Mich 329, 341, n 21, (Levin, J.); 508 NW2d 464 (1993). The *Moore* Court also cites *Adams, supra* at 354, n 8 (Mallett, J., and Cavanagh, C.J., concurring), quoting 1 Restatement Torts, 2d, § 35, p 52, which more fully sets forth the elements of false imprisonment:

> "(1) An actor is subject to liability to another for false imprisonment if
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> > "(a) he acts intending to confine the other or a third person within boundaries fixed by the actor, and
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> > "(b) his act directly or indirectly results in such a confinement of the other, and
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> > "(c) the other is conscious of the confinement or is harmed by it."[1]

[1] Restatement Torts, 2d, § 42 provides: "Under the rule stated in § 35, there is no liability for intentionally confining another unless the person physically restrained knows of the confinement or is harmed by it." The Restatement, in comment *a*, explains:

(continued…)

The undisputed evidence in this case establishes that defendants offered plaintiff Tyler the opportunity to remove her mother from the hospital, against medical advice, upon presentation of her authority as Rhine's guardian. Moreover, it is undisputed that defendants offer was presented to a neutral third party with the power to enforce Tyler's authority, Deputy Soncrainte. Both Tyler and her sister Wozny testified that they both flatly rejected defendants' offer. The trial court correctly ruled that Tyler's rejection of the offer, apparently on the basis of financial considerations, does not counter that it was extended. Further, the trial court correctly ruled on the basis of the undisputed evidence that reasonable minds could not disagree that defendants did not act "with the intention of confining another," *Adams, supra* at 341, and therefore, summary disposition was properly granted to defendants on plaintiffs' false imprisonment claim. *West, supra* at 183.

Plaintiffs' argument that defendants' failure to promptly transfer Rhine to Botsford Hospital constitutes false imprisonment is without merit. Plaintiffs' rely almost exclusively on *Tate v Botsford Gen Hospital*, unpublished opinion per curiam of the Court of Appeals, issued April 29, 2005 (Docket No. 245081) for this proposition. Plaintiffs' reliance on *Tate* is misplaced. First, because Tate is an unpublished opinion, it has no binding authority under the rule of stare decisis. MCR 7.215(C)(1). Moreover, our Supreme Court reversed *Tate*. 472 Mich 904; 696 NW2d 684 (2005). Third, this Court's decision in *Tate* was premised on the right of a conscious, competent person to decline medical treatment. *Tate, supra,* slip op at 2-3. Here, Rhine was not a competent person. In addition, the patient in *Tate* eventually left the hospital against medical advice. Here, it is not disputed that defendants offered Tyler the opportunity to remove Rhine AMA. So, *Tate* is not binding precedent, it is factually distinguishable, and it is inapposite on the merits. Furthermore, the admissible evidence presented to the trial court

(…continued)

> *a*. False imprisonment resembles battery rather than assault, in that it is possible for a confinement to occur without the plaintiff's being aware of it at the time. Where, however, no harm results from a confinement and the plaintiff is not even subjected to the mental disturbance of being made aware of it at the time, his mere dignitary interest in being free from an interference with his personal liberty which he has only discovered later is not of sufficient importance to justify the recovery of the nominal damages involved. Accordingly, no action for false imprisonment can be maintained in such a case.

Nevertheless, liability may be imposed where a person is not aware of the confinement when the person suffers actual harm, as explained in comment *b*:

> *b*. There may, however, be situations in which actual harm may result from a confinement of which the plaintiff is unaware at the time. In such a case more than the mere dignitary interest, and more than nominal damages, are involved, and the invasion becomes sufficiently important for the law to afford redress.

Here, although Tyler testified her mother was bruised and unable to walk for three weeks after her hospitalization, no legal claim is made that defendants physically injured plaintiff. Indeed, plaintiffs specifically eschew that their claim is one of malpractice. In that regard, the record indicates that defendants provided appropriate care for Rhine.

establishes that the only impediments to transferring Rhine to Botsford Hospital were Tyler's failure to establish her bona fides as guardian and the lack of bed space at Botsford Hospital.[2]

Likewise, plaintiffs misplace reliance on *Stowers v Wolodzko*, 386 Mich 119; 191 NW2d 355 (1971). Plaintiffs argue that even if defendants' offer to release Rhine AMA defeats the necessary element of intent to confine, under *Stowers* defendants' limiting Tyler's access to Rhine created a cause of action for false imprisonment. In *Stowers*, the defendant doctor was held liable for actions taken subsequent to the plaintiff's confinement in a private mental hospital pursuant to a valid court order. *Id*. at 122. The plaintiff was held several days, and the defendant did not permit her to telephone or write to her friends, relatives, or an attorney. *Id*. at 126-127. The jury found the defendant liable for false imprisonment. The *Stowers* Court opined:

> [D]efendant was not found liable for admitting or keeping plaintiff in Ardmore Acres. His liability stems from the fact that after plaintiff was taken to Ardmore Acres, defendant held her incommunicado and prevented her from attempting to obtain her release, pursuant to law. Holding a person incommunicado is clearly a restraint of one's freedom, sufficient to allow a jury to find false imprisonment. [*Id*. at 135.]

Stowers is factually distinguished form the present case because the plaintiff in *Stowers* could meaningfully communicate, and holding her incommunicado prevented her from contacting an attorney, who could secure her release. Here, Rhine could not meaningfully communicate. More important, although defendants limited Tyler's access to Rhine, it was Tyler who possessed the legal authority to take Rhine home or to another healthcare facility. Thus, assuming for the purpose of analysis that defendants' actions constituted holding Rhine incommunicado, Tyler was never "prevented . . . from attempting to obtain [Rhine's] release, pursuant to law." *Id*. at 135. Consequently, *Stowers* is factually distinguished from the present case and does not establish that delay in transferring Rhine to Botsford Hospital amounts to false imprisonment.

We decline to reach defendants alternative basis for affirming the trial court: that Rhine was never conscious of her alleged confinement. Plaintiffs dispute that "consciousness of confinement" is a necessary element to establish false imprisonment, citing M Civ JI 116.21. But it is not necessary for this Court to reach the issue of whether "consciousness of confinement" is also a necessary element of false imprisonment because plaintiffs did not present sufficient evidence to establish a prima facie case regarding the undisputed essential element of intent to confine, and the trial court properly granted defendants summary disposition on that

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[2] Plaintiffs point to an unsworn statement by Dr. Robert Stomel in which Stomel states that he telephoned Huron's emergency room during the early morning hours of December 19 but the staff was rude and "refused to transfer the patient to Botsford." Notably, Stomel does not state that he was acting on behalf of Rhine's lawful guardian, or indicate he offered to transmit proof of the guardian's authority by facsimile or other means to Huron. More importantly, because the "statement" is unsworn, it does not create a question of material fact precluding summary disposition. MCR 2.116(G)(4); *Tate, supra*, 472 Mich 904.

basis. Because the trial court did not specifically address this issue, it is inappropriate for this Court to do so. See *Roberts, supra* at 597-598 (courts should avoid dictum), and *Polkton Twp v Pellegrom,* 265 Mich App 88, 95; 693 NW2d 170 (2005) (an issue is not properly preserved if it is not raised before, addressed, and decided by the trial court).

C. Defendants' Cross-Appeal

Defendants present two issues in their cross-appeal. First, defendants argue that plaintiffs' complaint sounds in medical malpractice because plaintiffs complain about the care and treatment defendants rendered to Rhine. Defendants contend that because plaintiffs did not comply with the procedural requirements of MCL 600.2912b (notice of intent) and MCL 600.2912d (affidavit of merit), plaintiffs' complaint should have been dismissed on this basis also. Second, defendants state that MCL 400.11a requires healthcare providers to report suspected cases of adult abuse to the county department of social services. Further, MCL 400.11c, provides in pertinent part: "A person acting in good faith who makes a report or who assists in the implementation of sections 11 to 11b, . . . shall be immune from civil liability which might otherwise be incurred by making the report or by assisting in the making of the report." Defendants advocate applying a broad construction to the statute, and to further its purposes, defendants' conduct was immune from tort liability.

These issues are moot because defendants have already been properly granted summary disposition. This Court cannot grant further relief. An issue becomes moot when an event occurs which renders it impossible for the reviewing court to grant relief. *BP7 v Bureau of State Lottery*, 231 Mich App 356, 359; 586 NW2d 117 (1998). In general, this Court will not review moot issues. *Id*. Moreover, because this Court agrees that the trial court correctly granted summary disposition for the grounds that it did, our further discussion on other issues defendants assert would be mere obiter dictum. *Roberts, supra* at 597-598; *Reynolds v Bureau of State Lottery*, 240 Mich App 84, 95; 610 NW2d 597 (2000).

IV. Conclusion

The trial court correctly ruled that when viewed in a light most favorable to plaintiffs, the evidence failed to create an issue of material fact that defendants' conduct was so extreme and outrageous that it would support a tort claim for intentional infliction of emotional distress. Likewise, the trial court correctly ruled that when viewed in a light most favorable to plaintiff, the evidence failed to raise factual dispute regarding whether defendants acted with the requisite intent to establish the tort of false imprisonment. Accordingly, the trial court properly granted defendants summary disposition. MCR 2.116(C)(10).

We affirm.

/s/ Jessica R. Cooper
/s/ Kathleen Jansen
/s/ Jane E. Markey